

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Applicant(s): Grant et al. | |
| Serial No.: 10/663,263 | |
| Filed: September 16, 2003 | Group Art Unit: 3732 |
| Title: COMBINATION BONE FIXATION/IMMOBILIZATION APPARATUS | Examiner: Philogene |
| Attorney Docket No.: COOK 1 | |

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Commissioner for Patents
Washington, D.C. 20231

RESPONSE

Dear Sir:

Applicant submits this response to the Office Action mailed April 5, 2005.

In the present Office Action, the examiner has rejected all of the claims as being anticipated by Anderson or obvious over Anderson in view of Numes or Malewicz, or both. For one or more of the following reasons, Applicant submits that the claims are in condition for allowance.

The present invention is designed for use in connection with foot-related surgery. The present invention is a combination of technologies. It is a hybrid of a) well-known cam walker boots and b) circular frames (commonly used in Ilizarov-type procedures). This hybrid is especially useful for foot-related procedures that require that the foot of a patient be immobilized with respect to the lower leg of the patient.

In the specific medical field of foot-related procedures, the term "foot plate" is a term of art to those of skill in the field. The specific meaning of the term in the context of the present application is explicitly defined on page 9 of the application as follows:

For purposes of the present invention, the term "foot plate" is defined in its most broad sense to include conventional constructions such as those shown on the drawings, but also rail-type devices and other orthotic apparatuses used in foot-related procedures.

The drawings illustrate a U-shape foot plate, the most common type of foot plate that is used in connection with foot surgeries such as those that include Ilizarov-type procedures. As seen in the drawings and as explained in the description, the foot plate has transfixation wires fixed to it. (See Figures 2 and 3). In view of the foregoing, the specific definition of a foot plate is known to those of skill in the art of foot-related procedures including, but not limited to, foot reconstruction and foot salvage. The present application specifically describes a device that has transfixation wires connected to it for use during foot-related procedures.

All of the rejections in the present Office Action rely on the fundamental assumption that the Anderson reference discloses a foot plate. If Anderson does not disclose a foot plate as defined in the present invention, then all of the rejections based on anticipation and obviousness are no longer supported.

Applicant submits that none of the cited references, including Anderson, nor any other references that Applicants are aware of, disclose a foot plate as described in combination with the claimed apparatus.

We turn now to the Anderson reference, U.S. Patent No. 2,079,567. As described in the Anderson reference itself, that invention is useful for reduction of pelvic fractures and fractures of the femur and bones of the lower leg. (Column 1, lines 49-54). The applicability and teachings of Anderson effectively end at the ankle. There is no mention in Anderson of any foot-related procedure. Additionally, the specific foot plate 9 in Anderson referenced by the examiner does not have any transfixation wires attached to it. In fact, transfixation wires cannot be attached to the foot plate 9 shown in the Anderson drawings. Still further, the only transverse transfixation wire shown in Anderson is through the leg of the patient in the portion of the Anderson device that would necessarily correspond to the claimed "substantially rigid leg support." There is no disclosure of transfixation wires with respect to a patient's foot in a foot-related procedure. This is because Anderson does not disclose any apparatus for use in a foot related procedure. Anderson is limited to leg and pelvis fractures and similar issues.

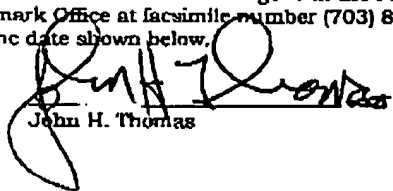
In addition to the foregoing, the foot plate 9 shown in Anderson cannot be the claimed foot plate, because it would correspond, if at all, to the "foot support" of the present invention. In other words, if it is the position of the examiner that the foot plate of Anderson corresponds to the claimed foot plate, then the presently-claimed invention, for instance in Claim 2, would have no meaning. The general concept of a supporting component for a foot as shown in the "foot plate 9" of Anderson is defined in the present invention as a foot support. (See, e.g., foot support 60). In other words, while the Anderson reference can be argued to disclose the foot support component of the present invention, it cannot be so broadly construed as to cover the foot plate defined by the present invention.

As explained in detail herein, Applicant submits that the fundamental misunderstanding of the definition of a foot plate is the cause for the present rejection. The medical purpose of the claimed invention is the foot, while Anderson is limited to the leg. Therefore, for one or more of the foregoing reasons, Applicant submits that the present application is in condition for allowance. The anticipation and obviousness rejections are traversed. Favorable action is requested hereon.

The Commissioner is hereby authorized to charge any deficiencies in payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 50-2127.

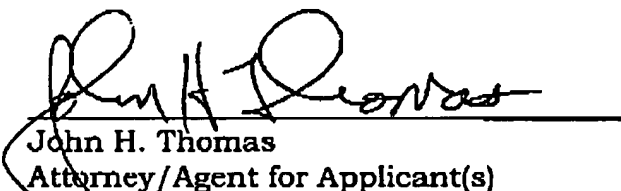
CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to Examiner Pedro Philogene at the Patent and Trademark Office at facsimile number (703) 872-9306, on the date shown below.


John H. Thomas

Date of Deposit: May 11, 2005

Respectfully submitted,


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